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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,219	03/26/2004	David L. Kelly	032885-86	8400
7590 JOHN K. UILKEMA THELEN REID & PRIEST LLP P.O. BOX 190187 SAN FRANCISCO, CA 94119-0187		10/09/2007	EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,219	KELLY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	William V. Gilbert	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 06 July 2007.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 13-17, 20-23, 28-31, 33-36, 39 and 40 is/are withdrawn from consideration.
- 5) Claim(s) 3, 4, 18, 25, 26, 37 is/are allowed.
- 6) Claim(s) 1, 2, 5, 10-12, 19, 24, 27, 32 and 38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

This is a Final Office Action. Claims 6-9, 13-17, 20-23, 28-31, 33-36, 39 and 40 remain withdrawn. Claims 1-5, 10-12, 18, 19, 24-27, 32, 37 and 38 are examined.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1, 2, 5, 19, 24, 27 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung (U.S. Patent No. 4,835,933) in view of Robb (U.S. Patent No. 3,830,032).

Claim 1: Yung discloses a rebar support chair comprising a table (Fig. 5: formed around 34, 35 and 57) with opposed ears (Fig. 4: 32) and legs (Fig. 1: 25a, 26a) having a T-shaped cross section with an arcuate outer surface (see figure) and a reinforcing web portion (26b), the legs diverge outwardly from the table to define a segment of a cone, the legs have a free end portion separate from the other legs (see "A" from attached Figure 1, below) separate from the other legs to provide free access between the legs (open portion 28), and the legs terminate at a distal end formed on the web portion, and a foot (20) on the distal end of each leg. While Yung discloses a web portion (26b), it does not disclose an inwardly extending web portion. Robb discloses a reinforcement chair member (Fig. 3) with an inwardly extending web portion (48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have an inwardly extending web portion as in Robb in order to further strengthen the leg members.

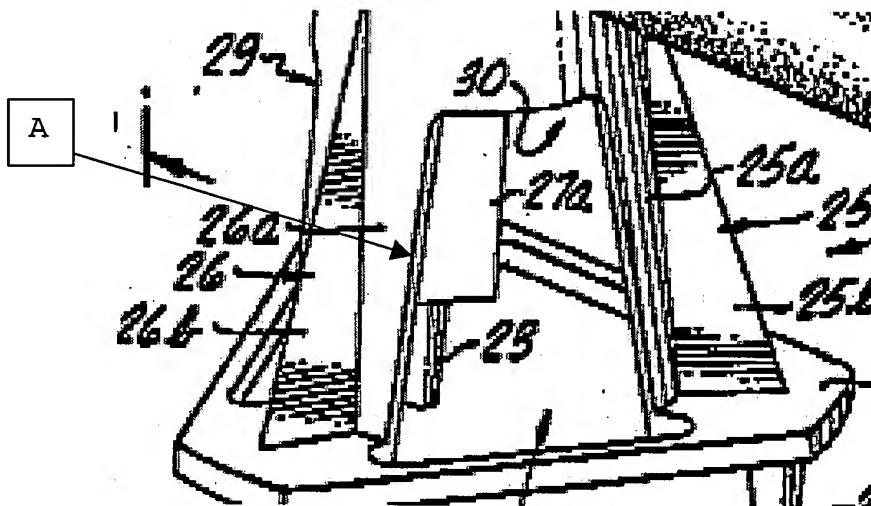


Figure 1 from Yung

Claim 2: the table is circular and the ears are located between the annularly spaced locations from which the legs extend.

Claims 5 and 27: the outer surface of each leg converges adjacent the distal end of the leg to provide space proximal the distal end to allow fluid concrete to flow (see in cooperation with 21)

Claims 19 and 38: the table has a generally horizontal top surface (34), but while the legs diverge outwardly, Yung does not disclose the specific angle of the legs. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the legs at the angle range as claimed because Applicant did not

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state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation.

Claim 24: Yung discloses a support chair having a cradle (Fig. 5, proximate 57) for supporting a rebar, legs (Fig. 1: 25a, 26a) having a T-shaped cross section with an arcuate outer surface (see figure) and a reinforcing web portion (26b), the legs diverge outwardly from the table to define a segment of a cone, the legs have a free end portion separate from the other legs (see "A" from attached Figure 1, above) separate from the other legs to provide free access between the legs (open portion 28), the legs terminate at a distal end formed on the web portion, and a foot (20) on the distal end of each leg. While Yung discloses a web portion (26b), it does not disclose an inwardly extending web portion. Robb discloses a reinforcement chair member (Fig. 3) with an inwardly extending web portion (48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have an inwardly extending web portion as in Robb in order to further strengthen the leg members.

Claims 10, 11, 12 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yung in view of Robb as

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applied to claims 1 and 24 above, and further in view of Haslem (U.S. Patent No. 6,089,522).

Claims 10 and 32: Yung in view of Robb disclose the claimed invention including that the member is unitary plastic material (Col. 5, lines 18-22), and that the web would taper toward the distal end of the leg (Robb 48). The prior art of record does not disclose that the member is a polymeric material. Haslem discloses a member made of polymeric material (Col. 8, lines 5-10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the chair in Yung in view of Robb of polymer because a polymer is a plastic and would function equally as well with the plastic member in Yung in view of Robb.

Claim 11: Regarding the argument of the unitary construction of a polymeric material, see rejection of Claim 10. The web portions of the legs would join indirectly beneath the table.

Claim 12: Regarding the argument of the unitary construction of a polymeric material, see rejection of Claim 10. The web portions in the prior art would create an arch beneath the table. While Yung does not disclose the legs in pairs on diametrically opposite sides of the table, Robb discloses the legs (26) in pairs and on opposite sides. It would have been

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obvious at the time the invention was made to a person having ordinary skill in the art to have this arrangement of the legs of the support in Yung because this would provide greater strength and stability to the support member.

***Allowable Subject Matter***

2. **Claims 3, 4, 18, 25, 26 and 37** are allowed.

***Response to Arguments***

3. Applicant's arguments filed 06 July 2007 have been fully considered but they are not persuasive as Claims are amended by the Applicant. See Rejection above.

Regarding Applicant's argument that Yung reference (cited above) in view of the Robb reference (cited above) would interfere with the flow of concrete into the follow space within the spacer chair (Remarks: page 15). The Examiner respectfully disagrees in that the combination of the references still provides ample room for the flow of concrete.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS**

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**ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG 2/10  
01 Oct 03

*Paul Kell*  
PTA SOURCE  
10/1/07